

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1916**

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**Introduced by Assembly Member Irwin**

February 11, 2016

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An act to add Section 94886.5 to the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL’S DIGEST

AB 1916, as amended, Irwin. Private postsecondary education: school closure bonds.

Existing law, the California Private Postsecondary Education Act of 2009, provides for the regulation of private postsecondary educational institutions by the Bureau for Private Postsecondary Education in the Department of Consumer Affairs. The act exempts an institution from its provisions, if any of a list of specific criteria are met.

The act establishes the Student Tuition Recovery Fund and requires the bureau to adopt regulations governing the administration and maintenance of the fund, including requirements relating to assessments on students and student claims against the fund, and establishes that the moneys in this fund are continuously appropriated to the bureau for specified purposes.

This bill would require a private postsecondary institution, as defined, to file a surety bond before January 1, 2019, with the ~~department~~ *bureau* in the ~~an amount equal to a reasonable estimate of the maximum amount of tuition and fees imposed on students of the institution for a period of attendance of greatest expense during the applicable academic year.~~ *no less than the total amount of tuition and fees charged by the institution for the immediately preceding academic year, divided by 4.*

In the event the institution ceases operation, this bill would require the bureau, upon request for a refund by a student or the implementation of a teach-out for students of the institution, to *bureau, if it makes a specified determination, to make a demand on the bond to: (1) issue a refund of tuition and fees for student claims, (2) implement a teach-out for students of the institution, and (3) to provide recovery to students who were enrolled at the time of the closure, or within 120 days of the closure, and reimburse the Student Tuition Recovery Fund for moneys paid from the fund for student claims that would have been otherwise recoverable under the bond: these students.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 94886.5 is added to the Education Code,  
2 to read:  
3 94886.5. (a) Before January 1, 2019, an institution shall file  
4 with the bureau a surety bond in the amount determined pursuant  
5 to subdivision (b). The bond shall be executed by the institution  
6 as principal and by a surety company authorized to do business in  
7 this state. The bond shall be continuous unless the surety is released  
8 pursuant to this section.  
9 (b) The amount of the bond shall be ~~equal to a reasonable~~  
10 ~~estimate of the maximum amount of tuition and fees to be returned~~  
11 ~~to students of the institution for the most expensive period of~~  
12 ~~attendance during the applicable academic year. Following the~~  
13 ~~initial filing of the bond with the bureau, the amount of the bond~~  
14 ~~shall be recalculated annually by the bureau based upon a~~  
15 ~~reasonable estimate of the maximum amount of tuition and fees~~  
16 ~~to be returned to students anticipated by the school for that period~~  
17 ~~of attendance. The bond shall, to the extent practicable, cover~~  
18 ~~potential administrative costs incurred by the bureau in an amount~~  
19 ~~no less than 5 percent of the total amount of the bond. In no case~~  
20 ~~shall the amount of the bond be less than five thousand dollars~~  
21 ~~(\$5,000); no less than the total amount of tuition and fees charged~~  
22 ~~by the institution for the immediately preceding academic year,~~  
23 ~~divided by four.~~  
24 (c) ~~(1)~~ In the event that an institution ceases operation, the  
25 bureau shall make demand on the surety of the institution ~~upon~~

1 the request for a refund by a student or the implementation of the  
 2 teach-out for the students of the institution according to the plan  
 3 provided to the bureau pursuant to Section 94926, and the surety  
 4 shall pay the claim due within 45 days. The bureau shall use the  
 5 bond to pay claims, to the extent practicable, filed by students who  
 6 have not otherwise recovered their tuition and fees through a  
 7 teach-out, or from the Student Tuition Recovery Fund established  
 8 in Section 94923. The bureau shall use the bond to reimburse the  
 9 Student Tuition Recovery Fund for all moneys paid from the fund  
 10 for claims that would have been otherwise recoverable under the  
 11 bond, except as provided in paragraph (4): *to provide refunds of*  
 12 *tuition and fees and, if applicable, punitive damages to students*  
 13 *who were enrolled at the time of the closure, or within 120 days*  
 14 *before the closure, if the bureau determines that there was a*  
 15 *significant decline in the quality or value of applicable educational*  
 16 *programs offered by the institution during that 120-day time period.*  
 17 *If Student Tuition Recovery Fund reimbursements are processed*  
 18 *for these students, the bureau shall immediately notify the surety*  
 19 *and use the surety to fully reimburse the fund. If the bureau fails*  
 20 *to make the demand on the surety within 120 days of closure, a*  
 21 *student or group of students of the closed institution may make a*  
 22 *demand directly on the surety of that institution to recover refunds*  
 23 *of tuition and fees and, if applicable, punitive damages to which*  
 24 *the student or students proves he or she is due. The surety shall*  
 25 *provide recovery to students for at least four years after the closure*  
 26 *of the institution or until the surety is depleted of funds. A student*  
 27 *may, but is not required to, use his or her recovery from the surety*  
 28 *to pay for a teach-out or other educational services.*

29 (2) ~~The bureau shall develop and implement a process, and~~  
 30 ~~necessary forms, for students enrolled in an institution ceasing~~  
 31 ~~operation to file claims to the bureau to recover their tuition and~~  
 32 ~~fees not recovered through a teach-out.~~

33 (3) ~~Any student enrolled in an institution ceasing operation who~~  
 34 ~~does not file a claim to recover tuition and fees pursuant to~~  
 35 ~~paragraph (2) may recover through a teach-out provided to students~~  
 36 ~~of the institution ceasing operation through a contract with a~~  
 37 ~~community college or any other arrangement approved by the~~  
 38 ~~bureau. The teach-out provided to the student shall replace the~~  
 39 ~~enrollment agreement or contract between the institution ceasing~~  
 40 ~~operation and the student, except that fee and tuition payments~~

1 shall be made by the student as required by the enrollment  
2 agreement or contract.

3 (4) ~~If the amount of the bond is less than the total tuition and~~  
4 ~~fees paid by all students declining the teach-out at the time the~~  
5 ~~institution ceased operation, the amount of the bond shall be~~  
6 ~~prorated among those students.~~

7 (5) ~~The Student Tuition Recovery Fund shall be used to cover~~  
8 ~~economic loss incurred by a student while enrolled at an institution~~  
9 ~~ceasing operation, including any prepaid tuition and fees not~~  
10 ~~recovered by the student under the bond.~~

11 (6) ~~The bond shall be used to provide recovery for students~~  
12 ~~enrolled in an institution at the time it ceases operation, within 121~~  
13 ~~days of the institution ceasing operation, and, if applicable, within~~  
14 ~~a period of a declining quality of education, as determined by the~~  
15 ~~bureau, longer than 120 days before the institution ceases operation.~~

16 (d) Once an institution ceases operation, no new students shall  
17 be enrolled.

18 (e) An institution's approval to operate shall be suspended by  
19 operation of law when the institution is no longer covered by a  
20 surety bond as required by this section. ~~The bureau shall give~~  
21 ~~written notice to the institution at the last known address, at least~~  
22 ~~45 days prior to a release of a surety, to the effect that approval~~  
23 ~~shall be suspended by operation of law until another surety bond~~  
24 ~~is filed in the same manner and like amount as the bond being~~  
25 ~~released.~~

26 (f) A surety on any bond filed under the provisions of this  
27 section may be released after the surety *or the institution* serves  
28 written notice to the bureau at least 60 days prior to the release.  
29 The release shall not discharge or otherwise affect any claim filed  
30 by any student for loss of tuition or any fees that occurred while  
31 the bond was in effect or that occurred under any note or contract  
32 executed during any period of time when the bond was in effect,  
33 except when another bond is filed in a like amount and provides  
34 indemnification for any loss.

35 (g) For purposes of this section, and notwithstanding Section  
36 94858, "institution" means, to the extent authorized by federal  
37 law, a private postsecondary educational institution that offers  
38 postsecondary education to the public in this state for an  
39 institutional charge, but does not include an independent institution  
40 of higher education, as defined in Section 66010, that has operated

1 in California as an independent academic institution for no less  
2 than 15 academic years.

3 (h) An institution, as defined in subdivision (g), shall on at least  
4 a quarterly basis provide copies of records sufficient to produce  
5 academic transcripts, and certify completion of the degrees or  
6 other programs offered by the institution, to a third party. The  
7 third party shall be independent of the institution, financially  
8 stable, and capable of producing transcripts and certifications,  
9 upon request, within two weeks of the closure of the institution,  
10 and in perpetuity thereafter. The third party shall charge a fee of  
11 no more than ten dollars (\$10) per transcript or certification it  
12 produces in the event of the institution's closure, and it shall not  
13 withhold a transcript or certification based on a student's  
14 nonpayment of a debt or obligation to the institution or any other  
15 party.

16 (i) The bond may be used to award punitive damages to a student  
17 of an institution that ceases operation and is found, by a court of  
18 law, to have violated state or federal law, or laws, that caused or  
19 contributed to the student's economic loss.

20 ~~(h)~~

21 (j) Tuition and fees for purposes of this section are both of the  
22 following:

23 (1) (A) Paid tuition and fees not recovered by the receipt of  
24 academic credits.

25 ~~(2) Paid tuition and fees recovered by the receipt of academic~~  
26 ~~credits that are nontransferable to accredited institutions.~~

27 (B) Tuition and fees pursuant to subparagraph (A) shall include  
28 amounts paid under the Cal Grant Program (commencing with  
29 Section 69430) of Part 42 of Division 5, the California National  
30 Guard Education Assistance Award Program, as established in  
31 Article 20.7 (commencing with Section 69999.10) of Chapter 2 of  
32 Part 42 of Division 5, and the Post 9/11 GI Bill program, as  
33 established in Chapter 33 (commencing with Section 3301) of Title  
34 38 of the United States Code, as it read on January 1, 2016.

35 (2) Interest on educational loans incurred to pay tuition and  
36 fees not recovered by the receipt of academic credits.